IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

APPEAL NO.554 OF 2004
IN
ARBITRATION PETITION NO.191 OF 2004

Sonal Garments Appellants

vs.

Sango Silk Mills Respondents

Mr.D.H. Mehta i/b. Mr.M.G. Mimani for the appellants.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ

DATED : 7th September 2004

P.C.

Heard.

2. Mr.Mehta contends that there was no written agreement having arbitration clause between the parties and, therefore, the arbitrator lacked jurisdiction. He submits that a plea of lack of jurisdiction can be raised at any stage and Section 4 of the Arbitration Act is not a impediment for consideration of plea of want of jurisdiction by the Court even where the party has not objected the jurisdiction of the arbitrator. Mr. Mehta relied upon the judgment of the Supreme Court in the case of Waverly Jute Mills Co.Ltd vs. Raymond and Co. (India) Pvt. Ltd., AIR 1963 S.C. 90 and M/s.Gangaram

Ratanlal v. M/s.Simplex Mills Co.Ltd., AIR 1982 Bombay 72.

3. At the outset, we may observe that the two judgments cited by the learned counsel for the appellant has no relevance or application to the controversy before us.

4. It is not in dispute that despite the notice having been received from the arbitral Tribunal the appellant did not choose to appear. The arbitral Tribunal in its award observed thus:

> "3. We have heard the submissions on behalf of the plaintiffs and also perused the relevant documents produced by the plaintiffs. We have given several chances to the Defendants. However, the Defendants were not present at any of the hearings. The Defendants even did not file their reply. The Defendants have not disputed the claim of the Plaintiffs and have not raised any objection thereto. Plaintiffs have produced before the Arbitrators the Defendants' Order and the copies of the plaintiffs' invoices statement of account, the Defendants letter dated 4th January 2003 and copy of the Plaintiffs' letter dated 21st March 2002. On the basis of the said documents we find that the claim made by the Plaintiffs is true and correct. On the invoices of the plaintiffs, the rate of interest has been mentioned. The plaintiffs have claimed the amount of interest @ 24% per annum, after 15 days from the date of the invoice. However, as per the rules of the Committee we Award interest till 31st July 2002 @ 19.20% per annum and thereafter @ 18% per annum."

5. Section 16 of the Arbitration and Conciliation Act, 1996 confers power on the arbitral Tribunal to rule on

its own jurisdiction including ruling on any objection with regard to the existence or validity of the arbitration agreement. Having not raised any objection before the arbitral Tribunal the existence of the arbitration agreement under section 4 of the Act of 1996, the appellant is deemed to have waived his right to object the existence of arbitration agreement.

6. The learned Single Judge in the impugned order while rejecting the arbitration petition filed under section 34 held that the appellants having failed to appear before the arbitral Tribunal, they are deemed to have waived all their objections to the arbitration and the Award under Section 4. We do not find any infirmity in the impugned order.

7. Appeal is, accordingly, dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR,J.)